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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,297	02/15/2007	Matthias Pirsch	175.8360USU	6248

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EXAMINER	
ROGERS, DAVID A	

ART UNIT	PAPER NUMBER
2856	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/571,297	PIRSCH ET AL.	
	Examiner	Art Unit	
	DAVID A. ROGERS	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 January 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) *12-18* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *10 March 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 U.S.C § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1, 2, 10, and 11 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by United States Patent 6,490,913 to Martin *et al.*

Martin *et al.* discloses a climate chamber (reference item 1) with a housing for holding an analysis device; e.g., an atomic force microscope. The housing is provided with an inlet (reference item 9) and an outlet (reference item 10) for providing conditioned (humidified) air. The humidified air will flow at least partially against the analysis device or the sample within the housing. The device comprises a platform (reference item 16) having a sample stage (carrier) (reference item 20). The platform/carrier will be inserted into the chamber such that the carrier (holding the sample) will be within the chamber. As such any air passing from the inlet will inherently flow at least partially against the sample carrier as it circulates in the chamber and passes through the outlet.

With regard to claim 2 the tapped bore through the housing forms a flow directing device for the input airflow.

With regard to claims 10 and 11 it is noted that the applicant's specification states:

> In a particularly preferred embodiment, the housing is configured such that it promotes an optimum flow. Consequently, only a very small quantity of condensate is found at the housing inner wall. Flow optimization can preferably be realized by arranging two adjacent walls at an angle of at least 90° relative to each other."

The chamber of Martin *et al.* has two adjacent walls arranged at an angle of 90°. Therefore, the chamber of Martin *et al.* is configured for optimum flow.

Claim Rejections - 35 U.S.C. § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 2, 4, 7, 8, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable United States Patent 3,393,032 to Crisler *et al.*

Crisler *et al.* teaches a climate chamber (reference item 20) having a housing that defines a climate compartment and which holds at least partially a microscope (reference item 90). The climate chamber is provided with inlet ports (reference item 75) and outlet ports (reference item 80) for allowing a medium to flow through the climate chamber.

Crisler *et al.* does not expressly teach a device having a sample carrier. However, the microscope is taught by Crisler *et al.* as being a "standard laboratory microscope". See column 1 (lines 69-72). Official notice is hereby taken that "standard laboratory microscopes" have sample carriers for such items as slides that are held in a

horizontal orientation. Gas passing from the inlet will inherently flow at least partially against the sample carrier as it circulates in the chamber and passes through the outlet.

With regard to claim 2 the inlet ports through the housing form a flow directing device for the input medium.

With regard to claim 4 the inlets and outlets appear to be laterally offset from the microscope and any sample slide associated therewith.

With regard to claim 7 the applicant's specification states that condensate-sensitive devices include the lenses of the microscope. As configured the lenses of the microscope in the device of Crisler et al. are located in the flow of the medium that circulates through the chamber.

With regard to claim 8 Crisler *et al.* discloses the use of temperature sensors. See column 3 (lines 14-28). The temperature sensor, when used in the chamber, will be near the carrier that holds the sample being examined using the microscope.

With regard to claims 10 and 11 it is noted that the applicant's specification states:

> In a particularly preferred embodiment, the housing is configured such that it promotes an optimum flow. Consequently, only a very small quantity of condensate is found at the housing inner wall. Flow optimization can preferably be realized by arranging two adjacent walls at an angle of at least 90° relative to each other."

The chamber of Crisler *et al.* has two adjacent walls arranged at an angle of 90°. Therefore, the chamber of Crisler *et al.* is configured for optimum flow.

5. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crisler *et al.* as applied to claim 1 above, and further in view of United States Patent 4,855,601 to Savoyet.

Crisler *et al.* teaches a housing having an analysis device such as a standard laboratory microscope which would have a sample carrier holding a sample for observation using the standard laboratory microscope. Crisler *et al.* does not expressly teach that the conditioned medium flows against a lower side of the sample carrier. However, the circulation ports on the chamber of Crisler *et al.* are located near the lower portion of the back side. This would induce a flow within the chamber that would inherently flow against the lower side of any sample carrier (slide) that is being using with the standard laboratory microscope.

In the even that the applicant still does not agree then Savoyet shows that it is already known to provide a fan (reference item 38) for directing flow against the lower side of a sample carrier (reference item 7). In Savoyet at least 50% to 70% of the medium flows against the carrier.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Crisler *et al.* with the teachings of Savoyet in order to provide conditioned flow towards the lower surface of a sample carrier so that the environmental conditions of the sample can be controlled.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crisler *et al.* as applied to claim 1 above, and further in view of United States Patent 4,817,447 to Kashima *et al.*

Crisler *et al.* teaches a chamber for an analytical instrument. The chamber has inlets and outlets for flowing conditioned media. Crisler *et al.* does not teach providing conditioned media to a sample carrier at an angle of between 30º to 60º.

Kashima *et al.* teaches a device having a climate chamber with an inlet (reference item 25) that supplies conditioned media at least partially against a sample support (reference item 7). See column 6 (lines 52-62). This inlet portion has an approach angle that appears to be in the range of 30° to 60.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Crisler *et al.* with the teachings of Kashima *et al.* in order to provide an inlet for directing conditioned media to a carrier when it is desired to control the temperature or provide humidified air to the sample.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crisler *et al.* as applied to claim 1 above, and further in view of United States Patent 4,843,893 to Huber *et al.*

Crisler *et al.* teaches a chamber for an analytical instrument. The chamber has inlets and outlets for flowing conditioned media. Crisler *et al.* does not teach outlets opposite from the inlets.

Huber *et al.* discloses a climate-controlled chamber (reference item 10) having housing having an inlet (reference item 26) and an outlet (reference item 40) that is essentially opposite from the inlet and through which a medium flows. Within the climate-controlled chamber is a sample carrier (reference item 16), a temperature sensor (reference item 66), and an analytical device; e.g., a light sensor (reference item 77). The medium flows at least partially against the sample carrier, including the lower side of the sample carrier, and/or the analytical device. The attachment that fits the blower (reference item 28) to the chamber is considered to be a flow directing device.

See column 3 (lines 44-50). As at least two adjacent walls of the chamber are at 90° the chamber must have optimum flow.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Crisler *et al.* with the teachings of Huber *et al.* in order to move the outlets to be opposite the inlets as this would not alter or otherwise change the functionality of the test chamber.

Response to Arguments

8. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R. 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID A. ROGERS whose telephone number is

(571)272-2205. The examiner can normally be reached on Monday - Friday (0730 - 1600). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David A. Rogers/
Primary Examiner, Art Unit 2856